REMARKS

As has been discussed previously with the Examiner, the pending Office Action (which is to be replaced by Examiner Boles) mistakenly referred to claims 1 to 15 which were canceled in the previously filed Preliminary Amendment, in which claims 16 to 29 were correspondingly added.

On September 20, 2007, Aaron C. Deditch (reg. no. 33,865) spoke with Examiner Boles, and explained that claims 16 to 29 replaced canceled claims 1 to 15. Examiner Boles advised that a new office action would be issued. On November 30, 2007 and December 19, 2007, Aaron C. Deditch (reg. no. 33,865) again spoke with Examiner Boles, and again explained that claims 16 to 29 replaced canceled claims 1 to 15, and that this had been previously discussed. Examiner Boles again advised on both occasions that a new office action would be issued shortly.

Since a new office action has not yet been received, this reply (which is believed to be responsive) is being filed out an abundance of caution.

Claims 16 to 29 are now pending (and not previously canceled claims 1 to 15), as listed herein.

Applicants respectfully request reconsideration of the present application in view of this response.

Applicants thank the Examiner for indicating the claims 7 to 15 contain allowable subject matter. However, as to the objections to claims 7 to 15 (previously canceled), these claims were previously canceled, as were their respective base claims.

Claims 16 to 29 (which generally correspond to canceled claims 1 to 15) replaced canceled claims 1 to 15.

Claims 1 and 7 to 11 were rejected under 35 U.S.C. § 102(b) as anticipated by Matsumura, U.S. Patent No. 4,535,744. Claims 1 and 7 to 11 were rejected under 35 U.S.C. § 102(b) as anticipated by Mueller et al., U.S. Patent No. 5,727,527.

As regards the anticipation rejections, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be

identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

As to the rejections of claims 1 and 7 to 11, these claims were previously canceled. It is therefore respectfully requested that the anticipation rejections be withdrawn.

It is also submitted that claims 16 to 29 are allowable. *There are no pending rejections as to claims 16 to 29*.

Conclusion

It is therefore respectfully submitted that all of claims 16 to 29 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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